INDEPENDENCE OF THE ELECTION COMMISSION OF INDIA

A Critical Analysis of the 2023 Appointment Act in the Light of the Cockroach Janata Party Protests

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***Abstract*—The independence of the Election Commission of India is central to free and fair elections and public confidence in constitutional democracy. Article 324 of the Constitution vests the Commission with the superintendence, direction and control of elections. The appointment process has nevertheless raised questions about executive influence and institutional neutrality. In Anoop Baranwal v. Union of India (2023), the Supreme Court prescribed an interim selection committee comprising the Prime Minister, the Leader of the Opposition and the Chief Justice of India until Parliament enacted a law. The Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023 subsequently established a different statutory committee. In the context of reported Cockroach Janata Party protests concerning electoral-roll revisions and demands for institutional accountability, this paper examines the constitutional implications of the appointment framework. It proposes a politically balanced and transparent selection process, published merit criteria, accessible voter remedies and stronger procedural accountability.**

***Index Terms*—Election Commission of India, Article 324, appointment of election commissioners, electoral independence, 2023 Act, electoral reform**

I. Introduction

Free and fair elections are essential to representative democracy. The Election Commission of India administers elections to Parliament, State Legislatures and the offices of the President and Vice-President. Its constitutional role requires decisions to be made impartially and in accordance with law. Institutional independence depends not only on the powers assigned to the Commission but also on the process by which its members are selected, their security of tenure, and the availability of fair accountability mechanisms.

Recent protests associated with the Cockroach Janata Party have brought public attention to electoral-roll revisions and demands for the resignation of the Chief Election Commissioner. Reports describe allegations of political bias, which the Election Commission and government have disputed. These allegations should not be treated as established findings. They nevertheless provide a current context for examining whether the legal framework adequately protects institutional independence and public confidence.

II. Constitutional Framework and the Anoop Baranwal Judgment

Article 324(1) of the Constitution vests the superintendence, direction and control of elections in the Election Commission. Article 324(2) addresses the appointment of the Chief Election Commissioner and other Election Commissioners, subject to legislation made by Parliament. Article 324(5) provides

safeguards relating to service conditions and removal. These provisions reflect the importance of protecting election administration from arbitrary interference.

In Anoop Baranwal v. Union of India, 2023 INSC 190, decided on 2 March 2023, the Supreme Court addressed the absence of a parliamentary law governing appointments. The Court directed that appointments be made on the recommendation of a committee consisting of the Prime Minister, the Leader of the Opposition in the Lok Sabha and the Chief Justice of India, until Parliament enacted legislation. The interim direction was not a permanent constitutional requirement that the Chief Justice must always sit on the committee; it operated pending legislation. The judgment nevertheless remains important for its analysis of the relationship between appointment procedures and electoral independence.

III. The 2023 Appointment Act: A Critical Analysis

The Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023 establishes a statutory framework for appointments, qualifications, tenure and related service matters. Section 7 provides for a selection committee comprising the Prime Minister as Chairperson, the Leader of the Opposition in the Lok Sabha, and a Union Cabinet Minister nominated by the Prime Minister.

The participation of the Leader of the Opposition recognises the value of political pluralism. However, the Prime Minister and a Cabinet Minister nominated by the Prime Minister form two of the three members. This structure raises a concern that the Union Executive may exercise decisive influence over appointments to an institution responsible for administering elections in which the governing party participates. That structural concern does not, by itself, prove that an appointment is unlawful or that an individual commissioner is biased. The question is whether the design gives reasonable assurance of impartiality to the public and to competing political parties.

A further issue is transparency. Published selection criteria, meaningful scrutiny of candidates' qualifications, conflict-of-interest safeguards and a concise explanation of the final recommendation could make the process more accountable. Transparency must be balanced against legitimate privacy and security interests, but appointment to a constitutional office should be governed by clear and defensible standards.

IV. The Protests and Their Constitutional Significance

Reporting in September and October 2026 describes Cockroach Janata Party protests demanding the Chief Election Commissioner's resignation over disputed voter-list revisions. Critics have alleged that the revisions could unfairly exclude eligible voters or benefit a political party; the Election Commission has denied political bias and stated that electoral-roll changes are intended to remove ineligible entries. These competing claims require verification through reliable evidence, official records and lawful review.

The protests are relevant to this paper not because a protest itself proves misconduct, but because they illustrate the importance of public trust in electoral administration. Accurate electoral rolls require the removal of ineligible entries while protecting eligible voters from wrongful deletion. Notice, accessible correction procedures, timely appeals and transparent aggregate data can help reconcile these objectives. Calls for resignation must also be distinguished from lawful removal: public criticism cannot replace the constitutional and statutory procedures applicable to officeholders.

V. Proposed Reforms

First, Parliament should consider a more politically balanced selection committee. One option is a committee involving the Prime Minister, the Leader of the Opposition and the Chief Justice of India or a judicial nominee, with a carefully defined role for an independent expert. The final design should reduce unchecked influence by any one stakeholder while avoiding persistent deadlock.

Second, the law should require published eligibility and assessment criteria, including integrity, relevant administrative experience and knowledge of election management. The search and selection committees should document their assessments and provide a concise public explanation of the final recommendation, subject to legitimate confidentiality limits.

Third, electoral-roll revision procedures should include accessible notice and correction mechanisms, timely appeals, and publication of anonymised data on additions, deletions, objections and restorations. Independent audits may be appropriate where credible evidence indicates systemic discrepancies. Fourth, significant institutional disagreements should be recorded under clear rules, and reasoned decisions should be made public where legally permissible. Finally, credible complaints of misconduct should be assessed through fair procedures that protect both institutional independence and due process.

VI. Conclusion

The independence of the Election Commission is indispensable to constitutional democracy. The 2023 Appointment Act provides a statutory process, but the composition of its selection committee continues to raise questions about executive influence and institutional balance. The Anoop Baranwal judgment and the reported Cockroach Janata Party protests provide a basis for examining these issues, while allegations arising from political controversy must remain distinct from proven facts.

A transparent, merit-based and politically balanced appointment process, together with effective voter remedies and lawful accountability, could strengthen public confidence. The objective should not be to place the Commission beyond scrutiny, but to ensure that it can perform its constitutional responsibilities independently and impartially. Appointment reform is therefore an important part of preserving the credibility of India's electoral system.

References

[1] Constitution of India, arts. 14, 324 and 326.

[2] Anoop Baranwal v. Union of India, 2023 INSC 190; (2023) 6 SCC 161.

[3] Chief Election Commissioner and Other Election Commissioners (Appointment, Conditions of Service and Term of Office) Act, 2023, Act No. 49 of 2023, especially ss. 5–9. Reuters, "Indian police detain 'cockroach' movement leaders demanding election chief stand down," 13 October 2026.

[4] Deutsche Welle, "Why India's Cockroach movement wants the election chief out," 28 September 2026.

Primary-source links

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